



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 10, 1998

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR98-1654

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116397.

The Travis County Town Lake Animal Center (the "animal control") received a request for information concerning "incident of 1/2/98 claim of Doris Miller on 4/2/98 that Meiteen dog 'Buffy' attacked her @ 133401 Bullick Hollow Rd." You indicate you no longer wish to invoke section 552.101 of the Open Records Act, but instead continue to assert that portions of the requested information are excepted from public disclosure based on section 552.108 of the Open Records Act. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 provides in part:

- (a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of

preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Section 552.108 applies to a "law enforcement agency," that is, an agency which investigates crimes and enforces criminal laws. *See, e.g.*, Open Records Decision No. 126 (1976) (Attorney General's Organized Crime Task Force). It does not as a general rule apply to an agency whose chief function is regulatory in character. Attorney General Opinion MW-575 (1982) (Department of Agriculture). We have reviewed your arguments and we do not believe you have demonstrated that animal control is a law enforcement agency under section 552.108. Therefore, we conclude that animal control may not withhold the requested information under section 552.108.

The Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b) provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

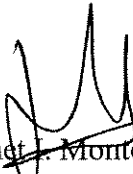
(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 (1990) at 7. Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). We note that the remaining information at issue appears to have been obtained from hospital records. Hospital treatment is routinely conducted under the supervision of physicians. Thus, information relating to the diagnosis and treatment of a patient in a hospital is confidential under section 5.08 of the MPA. Open Records Decision No. 546 (1990). We agree that the remaining portions of the requested information consist of information obtained from confidential medical records. Thus, the department must release this information in accordance with the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, §§ 5.08 (c), (j), (k). We have marked the documents accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet L. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID# 116397

Enclosures: Submitted documents

cc: Ms. Anne C. Meiteen
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(w/o enclosures)